

ESTTA Tracking number: **ESTTA601167**

Filing date: **04/29/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Jose Ramirez		
Entity	Individual	Citizenship	MEXICO
Address	Camino Real de Carretas 393 Local 2 Queretaro, 76060 MEXICO		

Attorney information	Paulo A. de Almeida Patel & Almeida, P.C. 16830 VENTURA BLVD, SUITE 360 ENCINO, CA 91436 UNITED STATES Paulo@PatelAlmeida.com Phone:8183801900
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Applicant Information

Application No	79134196	Publication date	04/08/2014
Opposition Filing Date	04/29/2014	Opposition Period Ends	05/08/2014
Applicant	SAAME TOOLS (SHAANXI) IMPORT & EXPORT CO., LTD. Room 11701 Shaanxi, CHINA		

Goods/Services Affected by Opposition

Class 008. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Hand instruments, namely, abrading instruments; hand tools, namely, wrenches; table cutlery, namely, knives, forks and spoons; hand-operated lifting jacks; hand-operated hand tools, namely, drills, picks; hand-operated garden tools, namely, cultivators; hand-operated agricultural implements, namely, chicken pluckers; shears; beard clippers; hand tools, namely, hand-operated pumps

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86265372	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			

Description of Mark	NONE
Goods/Services	

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	HOTDEAL.COM		
Goods/Services	On-line wholesale and retail store services featuring a wide variety of consumer goods of others; Advertising and marketing services, namely, promoting the goods and services of others		

Attachments	Notice of Opposition_HOTDEAL.pdf(23511 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Paulo A. de Almeida/
Name	Paulo A. de Almeida
Date	04/29/2014

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)	
Jose Ramirez,)	
)	Opposition No. _____
)	Serial No. 79/134,196
Opposer,)	Mark: HOTDEAL
)	
v.)	
)	
SAAME TOOLS (SHAANXI))	
IMPORT & EXPORT CO., LTD.,)	
)	
)	
Applicant.)	
)	
)	

Jose Ramirez, an individual, (hereinafter "Opposer") believes he will be damaged by registration on the Principal Register of the mark HOTDEAL shown in Appln. Ser. No. 79/134,196, and hereby opposes the same.

1. Since at least as early as July of 1998, Opposer has operated an on-line wholesale and retail store at the website www.hotdeal.com featuring a wide variety of the goods and services of others, and has advertised the products of others to consumers throughout the world, including in the United States. Since the inception of the website, Opposer has continuously provided the foregoing

services under the service mark HOTDEAL.COM (hereinafter, the "HOTDEAL.COM Mark").

2. Opposer's HOTDEAL.COM Mark is well-known among consumers and retailers who purchase products online.
3. As a result of Opposer's extensive marketing and advertising of the HOTDEAL.COM Mark, and through his continuous sales and advertising of the products of others using the HOTDEAL.COM service mark since July of 1998 in the U.S., the HOTDEAL.COM Mark has come to represent highly valuable consumer goodwill.
4. On April 17, 2014, Opposer filed U.S. Trademark Application Serial Number 86/265,372 for the mark HOTDEAL.COM based on his use of the mark in commerce for the following services in International Class 35:

On-line wholesale and retail store services featuring a wide variety of consumer goods of others; Advertising and marketing services, namely, promoting the goods and services of others

and for the following services in International Class 35 on an "intent-to-use" basis:

Operating online marketplaces for sellers, buyers, and traders of goods and services; online trading services in which sellers post products or services to be offered for sale, and purchasing, bidding, or trading is done via the Internet in order to facilitate the sale of goods and services by others via a computer network; On-line auction services; Commercial evaluation and rating of consumer goods for others prior to purchase; Providing a searchable online advertising guide featuring the goods and services of online vendors and traders; Providing a searchable online evaluation database for buyers, sellers, and traders; Advertising and marketing services provided by means of indirect methods of marketing communications, namely,

social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels; services in the nature of intellectual property claims management, namely, Processing and administration of claims of intellectual property owners against third party sellers and traders

(hereinafter, "Opposer's HOTDEAL.COM Application").

5. On July 17, 2013, Applicant, SAAME TOOLS (SHAANXI) IMPORT & EXPORT CO., LTD. (hereinafter, "Applicant"), filed U.S. Trademark Application Serial Number 79/134,196 for the mark HOTDEAL, opposed herein, with a Section 66(a) filing basis alleging its bona-fide intent to use the mark in connection with the following goods in International Class 8:

Hand instruments, namely, abrading instruments; hand tools, namely, wrenches; table cutlery, namely, knives, forks and spoons; hand-operated lifting jacks; hand-operated hand tools, namely, drills, picks; hand-operated garden tools, namely, cultivators; hand-operated agricultural implements, namely, chicken pluckers; shears; beard clippers; hand tools, namely, hand-operated pumps.

(hereinafter, the "HOTDEAL Application").

6. According to the USPTO records, Applicant is a limited company organized under the laws of China having an address of Room 11701, Ximei Building, No. 99, Changle Middle Road, Xincheng District, Shaanxi, China.
7. The HOTDEAL Application was published for opposition on April 8, 2014, and this Notice of Opposition is timely.

PRIORITY OF USE

8. On information and belief, Applicant does not have any basis for claiming rights in the mark HOTDEAL prior to Opposer's first use the HOTDEAL.COM Mark in the U.S. in July of 1998.
9. Opposer's first use of the HOTDEAL.COM Mark in the U.S. in July of 1998 predates the July 17, 2013, filing date of the HOTDEAL Application by more than fourteen (14) years. Thus, Opposer has priority of use of the mark HOTDEAL.COM based on its earlier use in commerce.

LIKELIHOOD OF CONFUSION

10. Applicant's proposed mark HOTDEAL is nearly identical to Opposer's HOTDEAL.COM Mark, and is likely, when applied to Applicant's proposed goods, to cause confusion, mistake or deception among consumers within the meaning of 15 U.S.C. § 1052(d).
11. Applicant's proposed goods are related to, and would be sold, advertised and directed at the same marketing and trade channels, and to the same consumers, as Opposer's services, or are in the natural scope of expansion of Opposer's services.
12. Applicant's proposed HOTDEAL mark so resembles Opposer's HOTDEAL.COM Mark, and the goods and services are similar such that the public is likely to view Applicant's proposed mark as denoting an affiliation, connection, or association of Applicant with Opposer and as to the origin, sponsorship, and approval of Applicant's goods by Opposer, when that is not the case, thereby damaging Opposer.

13. Upon information and belief, Applicant knew or should have known of Opposer's prior adoption and use of its HOTDEAL.COM Mark, and therefore could not have formed the requisite good faith belief that no other person, firm, corporation or association has the right to use said mark in commerce, and consequently knew that such use is and would be in derogation and violation of Opposer's rights.

14. Opposer will be damaged by the registration of Applicant's proposed HOTDEAL mark because Opposer's HOTDEAL.COM Application may be refused on the grounds of likelihood of confusion with Applicant's prior-filed HOTDEAL Application. Further, Opposer will be damaged in that such registration would support and assist in the infringing use of the mark, and will give colorable exclusive statutory rights to the Applicant in violation and derogation of the prior and superior common law trademark rights of Opposer.

WHEREFORE, Opposer requests that registration of the mark sought to be registered herein, HOTDEAL of Appln. No. 79/134,196, be denied and that this opposition be sustained.

Respectfully Submitted,

Dated: April 29, 2014

By: /Paulo A. de Almeida
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Attorneys for Opposer,
Jose Ramirez

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on ZHAO GANG, the correspondent for Appln. No. 79/134,196 as listed in the USPTO database, on April 29, 2014, via First Class U.S. Mail, postage prepaid to:

ZHAO GANG
Convention Plaza
3011, 30/F, Office Tower
1 Harbour Road
HONG KONG

/Paulo A. de Almeida

Paulo A. de Almeida